



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 18, 2011

Mr. Jaime J. Muñoz
Law Office of Jaime J. Muñoz
PO Box 47
San Juan, Texas 78589

OR2011-03772

Dear Mr. Muñoz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 411874.

The La Joya Independent School District (the "district"), which you represent, received a request for seven categories of information related to the requestor's employment as a district employee, including information pertaining to investigations and his termination. You state that the district has released six categories of information to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.108 and 552.135 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note that a portion of the submitted information, report 2011020052, is not responsive to the instant request, which seeks only information related to the requestor. This ruling does not address the public availability of non-responsive information, and the district is not required to release non-responsive information in response to this request.

Next, we must address the district's obligations under section 552.301 of the Government Code, which prescribes the procedural obligations placed on a governmental body that is requesting a decision from this office under the Act. Section 552.301(e) of the Government Code requires the governmental body to submit to this office within fifteen business days of receiving the request a copy of the specific information requested or a representative sample, labeled to indicate which exceptions apply to which parts of the documents. Gov't Code § 552.301(e). You state, and provide documentation showing, that the district received the instant request on December 16, 2010. The district's official calendar reflects that the district was closed from December 22, 2010 through January 7, 2011. Accordingly, the requested

information was required to be submitted to our office by January 25, 2011. The district timely submitted the first set of documents. However, the district submitted a second set of documents on February 14, 2011 in support of your response to our request for additional information under section 552.303.¹ Upon review, we find that a portion of these additional documents are responsive to the request and therefore should have been submitted by January 25, 2011. Consequently, as to the responsive information contained in the second set of documents, we find the district failed to comply with the requirements of section 552.301 of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of section 552.301 results in the legal presumption that the information is public and must be released unless the governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *Id.* § 552.302; *Simmons v. Kuzmich*, 166 S.W.3d 342, 350 (Tex. App.—Fort Worth 2005, no pet.); *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302); Open Records Decision No. 630 (1994). A compelling reason generally exists when information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3, 325 at 2 (1982). We note that some of this information is subject to section 552.101.² Because this section can constitute a compelling reason to withhold information for purposes of section 552.302, we will address its applicability to the information at issue.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential, such as section 261.201 of the Family Code. Section 261.201 provides, in relevant part:

(a) [T]he following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made

¹See Gov't Code § 552.303(c)-(d) (if attorney general determines that information in addition to that required by section 552.301 is necessary to render decision, written notice of that fact shall be given to governmental body and requestor, and governmental body shall submit necessary additional information to attorney general not later than seventh calendar day after date of receipt of notice).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a); *see also id.* § 261.001 (defining “abuse” and “neglect” for purposes of Fam. Code ch. 261). We note the district is not an agency authorized to conduct chapter 261 investigations. *See id.* § 261.103 (listing agencies that may conduct child abuse investigations). However, the information at issue pertains to an investigation conducted by the district’s police department, which is an agency authorized to conduct chapter 261 investigations. Based upon your representations and our review, we find that the entire first set of documents, and reports 2010050119 and 2010100050 in the second set, constitute information that was used or developed in an investigation by the district’s police department into alleged child abuse. Thus, these documents are within the scope of section 261.201(a). You do not indicate the district’s police department has adopted a rule that governs the release of this type of information. Accordingly, we assume no such regulation exists. Thus, we conclude that this information is confidential under section 261.201 of the Family Code, and must be withheld in its entirety under section 552.101 of the Government Code.³ The remaining responsive information must be released to the requestor.⁴

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877)

³As our ruling as to this information is dispositive, we do not address your arguments against its disclosure.

⁴The requestor in this instance has a right of access to some of the information being released that would otherwise be excepted from release under the Act. *See* Gov’t Code § 552.023(a) (“A person or a person’s authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person’s privacy interests.”); Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individuals request information concerning themselves). Thus, the district must again seek a decision from this office if it receives a request for this information from a different requestor.

673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,

A handwritten signature in cursive script, reading "Misty Haberer Barham".

Misty Haberer Barham
Assistant Attorney General
Open Records Division

MHB/eeg

Ref: ID #411874

Enc. Submitted documents

c: Requestor
(w/o enclosures)